

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN W. TALBOT,

Petitioner,

v.

LARRY L. JENKINS, Warden,
Redgranite Correctional Institution,

Respondent.

ORDER

08-cv-561-slc

On September 25, 2008, petitioner John Talbot, an inmate at the Redgranite Correctional Institution, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2003 conviction in the Circuit Court for Wood County. Petitioner raises five claims in which he alleges that he is in custody in violation of the laws and constitution of the United States because his no contest plea was not knowingly, voluntarily or intelligently made. Dkt. #1. In an order entered on September 29, 2008, this court found that because petitioner had failed to present all but one of his claims to the state courts, the petition would have to be dismissed in its entirety pursuant to Rose v. Lundy, 455 U.S. 509, 510 (1982), unless petitioner amended his petition to delete the unexhausted claims. Dkt. #2.

On October 17, 2008, petitioner filed a motion for clarification, asking several questions about what effect the dismissal of his petition would have on his claims. He also stated that as of October 13, 2008, he was proceeding on his unexhausted claims in state court. Dkt. #3. On October 20, 2008, this court responded to petitioner's questions and again asked petitioner to advise the court whether he wanted to voluntarily dismiss his petition in order to pursue his state court remedies. Dkt. #4. Petitioner failed to respond by November 3, 2008, the response deadline set by the court. Accordingly, I am dismissing the petition without prejudice for petitioner's failure to exhaust his state court remedies, pursuant to Rose v. Lundy.

ORDER

IT IS ORDERED that the petition for a writ of habeas corpus filed by John Talbot is DISMISSED WITHOUT PREJUDICE pursuant to the doctrine announced in Rose v. Lundy, 455 U.S. 509 (1982).

Entered this 12th day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge